

# **EXHIBIT P**

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April 23, 2008

**VIA HAND DELIVERY**

Honorable William H. Pauley  
United States District Court  
Southern District of New York  
500 Pearl Street  
Chambers 2210  
New York, NY 10007

Re: *Berry v. Deutsche Bank Trust Company Americas, et al.*  
S.D.N.Y. Case No.: 1:07-cv-7634 WHP

Dear Judge Pauley:

My firm represents the Post Confirmation Trust (the "PCT") and Robert Kors, both of whom are defendants in the above-captioned case (together, "Defendants"). Both Defendants have moved for summary judgment with respect to all claims that Plaintiff Wayne Berry brought against them in his Second Amended Complaint, including Mr. Berry's claims that Defendants abused process and violated RICO by assisting his wife in serving him with a summons and a dismissed divorce complaint. Defendants also moved for sanctions under Rule 11 against Mr. Berry and his counsel, Timothy Hogan, for bringing these claims.

Late last week, Defendants learned of a material misrepresentation on the part of Mr. Berry and Mr. Hogan that this Court should be made aware of when ruling on the pending motions. As it turns out, contrary to repeated assertions by Mr. Berry and his counsel, Mrs. Berry's divorce case is not dismissed, but is instead proceeding to trial this summer.

As the Court may recall, in moving for summary judgment on Mr. Berry's abuse of process claim, Defendants (1) cited case law for the proposition that service of a complaint is not, in and of itself, abuse of process, and (2) submitted uncontroverted evidence that they were not involved in the service of Mrs. Berry's divorce complaint. In opposition, Mr. Berry and his counsel maintained both in their papers and during oral argument that Defendants' cited law does not apply to them because Mrs. Berry's underlying divorce complaint was dismissed before it was served. According to them, this showed that the complaint was served solely to "terrorize" Mr. Berry, and created an exception of sorts to the law that Defendants cited. (Berry's Opp'n. Summ. J. 24).

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But the Hawaii family court docket shows that at the time of argument on Defendants' motion, the divorce complaint was not dismissed. On March 27, 2008, more than a week before the Court held oral argument, the Hawaii family court held a hearing in Mrs. Berry's divorce case. At the conclusion of that hearing, the court denied Mr. Berry's pending request to dismiss the divorce complaint and his objections to service of the complaint and instead set the case for trial. Orders issued that same day.

Neither Mr. Berry nor Mr. Hogan informed Defendants or this Court of the Hawaii proceedings or that the divorce complaint was not dismissed. Instead, during oral argument the following week, Mr. Hogan continued to affirmatively maintain that the divorce case was dismissed. (4/4/08 Hr'g Tr. 26: "it's true that the [divorce] case was dismissed"). This false representation is the result of either (1) a knowing misrepresentation by Mr. Hogan or (2) yet another example of Mr. Hogan's willingness to advance claims on Mr. Berry's behalf without conducting any factual or legal diligence. Either way, the misrepresentation to this Court during oral argument is sanctionable. *See O'Brien v. Alexander*, 101 F.3d 1479, 1490 (2d. Cir. 1996) (sanctioning counsel for making a statement during oral argument that was unsupported by evidence when that statement flowed directly from assertions in the complaint).

In light of Mr. Berry's contention that Defendants' motion should be denied because service of a dismissed complaint is an abuse of process, we believe that the Hawaii family court's March 27, 2008 ruling that Mrs. Berry's complaint was not dismissed is relevant to this Court's determination of Defendants' motion and is a matter of which the Court may take judicial notice. We have enclosed the relevant documents for Your Honor's review. Please feel free to contact us if you have any concerns.

Sincerely,



Michael E. Baumann

Encl.

**MATRIMONIAL ACTIONS CALENDAR  
COURT OF THE FIRST CIRCUIT  
FAMILY COURT**

DATE: THURSDAY, MARCH 27, 2008  
JUDGE: HONORABLE ROBERT MARK BROWNING, JUDGE PRESIDING  
CLERK: MAYUMI OMIYA  
REPORTER:  
BAILIFF/LAW CLERK: BETTY NAKAGAWA

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9:00 A.M.

1DV 06-1-000211 JULIANNE N BERRY  
VS.  
WAYNE FOSTER BERRY

CHERYL ROSE BRAWLEY  
FOR JULIANNE N BERRY

WAYNE FOSTER BERRY  
PRO SE

- (1) MOTION TO SET (FILED 2/6/08)  
(CHERYL BRAWLEY MOVANT)
  - (2) MOTION TO STRIKE "CHERYL BRAWLEY'S MOTION TO  
SET AND NOTICE OF MOTION" FOR A DISMISSED AND  
EXPIRED COMPLAINT FOR DIVORCE  
  
(FILED 3/10/08)  
(WAYNE BERRY MOVANT)
  - (3) NON-HRG MOTION TO DISMISS EXPIRED COMPLAINT  
FOR DIVORCE (FILED 9/12/07)  
(WAYNE BERRY MOVANT)

#07-01(10:14-10:18)

JUDGE: R. MARK BROWNING

**CLERK:** M. OMIYA

PRESENT: PLTF/JULIANNE BERRY W/HER ATTY,  
CHERYL BRAWLEY

**PLTF SWORN.**

COURT WILL NOTE FOR THE RECORD THAT IT ATTEMPTED TO TELEPHONE THE RESPONDENT/WAYNE BERRY THRU THE TELEPHONE NUMBER THAT WAS TYPED ABOVE THE CAPTION W/ RESPECT TO HIS MOTION TO STRIKE: CHERYL BRAWLEY'S MOTION TO SET AND NOTICE OF MOTION FOR A DISMISSED AND EXPIRED COMPLAINT FOR DIVORCE.

COURT BAILIFF REPRESENTED THAT A CALL WAS MADE TO 808-258-7144 AND A MESSAGE WAS LEFT ON THE ANSWERING MACHINE FOR MR. WAYNE BERRY THAT HIS CASE IS BEING HEARD AT THIS MOMENT AND TO CALL BACK AT 539-4460.

COURT NOTED THAT THIS MATTER WAS SET FOR 9:00 AM

R. MARK BROWNING  
MAR 27 2008

FAMILY MATRIMONIAL ACTIONS CALENDAR  
COURT OF THE FIRST CIRCUIT  
FAMILY COURT

DATE: THURSDAY, MARCH 27, 2008  
JUDGE: HONORABLE ROBERT MARK BROWNING, JUDGE PRESIDING  
CLERK: MAYUMI OMIYA  
REPORTER:  
BAILIFF/LAW CLERK: BETTY NAKAGAWA

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AND IT IS NOW 10:15 AM.

COURT WILL DISMISS MR. BERRY'S MOTION FOR WANT OF PROSECUTION. COURT WILL NOTE FURTHER THAT DURING THE COURSE OF PREPARING FOR THIS MOTION TO SET, THERE WAS A NON-HEARING MOTION TITLED, "NON-HEARING MOTION TO DISMISS EXPIRED COMPLAINT FOR DIVORCE" FILED ON 9/12/07, AND FOR SOME REASON THIS WAS NEVER CALENDARED.

MS. BRAWLEY INFORMED THE COURT THAT PER A LETTER TO MR. BERRY DATED 3/10/08 FROM THE FAMILY COURT, HIS MOTION TO STRIKE CHERYL BRAWLEY'S MOTION TO SET AND NOTICE OF MOTION FOR A DISMISSED AND EXPIRED COMPLAINT FOR DIVORCE HAS BEEN SCHEDULED TO HEARD AT THE SAME TIME AS PLTF'S MOTION TO SET ON 3/27/08 AT 9:00 AM.

COURT NOTED THAT IT IS CALENDARED TOGETHER AS MOTION NO. 2. COURT WILL DISMISS MR. BERRY'S NON-HEARING MOTION FOR WANT OF PROSECUTION.

COURT WILL SET THIS MATTER FOR TRIAL.  
CONCLUDED AT 10:18 AM.

=====

OFF RECORD DISCUSSION W/ PLTF & MS. BRAWLEY.  
TRIAL WILL BE SET AS FOLLOWS:  
T/W - 7/7/08 @ 8:30 AM (1 DAY)  
S/C - 6/19/08 @ 1:30 PM  
C/C - 6/26/08 @ 8:30 AM  
PTO NO. 1, EO DISMISSING DEFT'S MOTION FILED 9/12/07, AND EO DISMISSING DEFT'S MOTION FILED 3/10/08 SUBMITTED.

FAMILY COURT FIRST CIRCUIT STATE OF HAWAII	ORDER <input type="checkbox"/> Granting <input type="checkbox"/> Denying <input type="checkbox"/> In Part <input type="checkbox"/> Continuing <input type="checkbox"/> Oral <input checked="" type="checkbox"/> Re: <input type="checkbox"/> Motion to [ ]Continue [ ]Withdraw <input checked="" type="checkbox"/> Motion MOTION TO DISMISS EXPIRED	CASE NUMBER FC-D NO. 06-1-0211
COMPLAINT FOR DIVORCE		
JULIANNE N. BERRY PLAINTIFF, vs. WAYNE FOSTER BERRY DEFENDANT.	This document is prepared by: <input checked="" type="checkbox"/> Attorney for <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <b>CHECUL BRAWLEY 4489</b> Name 1164 BISHOP STREET, SUITE 500 Address HONOLULU, HI 96813 City, State, Zip Code (808) 533-0064 Telephone Number	
Motion Filed On: 9/12/07	Judge: R. MARK BROWNING	Hearing Date: 3/21/08
Present at the Hearing: <input checked="" type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Attorney for Plaintiff <u>C. BRAWLEY</u> <input type="checkbox"/> Defendant <input type="checkbox"/> Attorney for Defendant _____ <input type="checkbox"/> Other: _____ <input type="checkbox"/> Attorney _____ <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant was/were duly served but failed to appear.		
Based upon the representation/recrod made. IT IS HEREBY ORDERED that the <input type="checkbox"/> oral motion is <input type="checkbox"/> granted <input type="checkbox"/> denied <input type="checkbox"/> granted in part <input type="checkbox"/> denied in part as follows: <u>DEFENDANT'S MOTION IS DISMISSED FOR LACK OF PROSECUTION.</u>		
<input type="checkbox"/> Continuation Page(s) Attached. Signatures on Last Page.		
APPROVED: <input type="checkbox"/> Form <input type="checkbox"/> Content <u>Juliann S.</u> <input type="checkbox"/> Form <input type="checkbox"/> Content _____ <input type="checkbox"/> Form <input type="checkbox"/> Content <u>Angie</u> <input type="checkbox"/> Form <input type="checkbox"/> Content _____ <input type="checkbox"/> Form <input type="checkbox"/> Content _____		Plaintiff Defendant Attorney/Pltf Attorney/Defl Other
Date <b>MAR 27 2008</b>	Judge <u>R. Mark</u>	<div style="border: 1px solid black; padding: 5px;">           FAMILY COURT            FIRST CIRCUIT COURT            STATE OF HAWAII            FILED P.M.  <u>12:02 o'clock, MAR 27 2008</u>    <u>M. Orlina</u>  <u>M. Orliya</u>            Clerk         </div>
FOR COURT USE ONLY		
EXPEDITED ORDER-SHORT FORM		